

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

In the Matter of)
)
Amendment of 47 C.F.R. § 1.1200) GC Docket No. 95-21
et seq. Concerning Ex Parte)
Presentations in Commission)
Proceedings)

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GTE's COMMENTS

GTE Service Corporation, on behalf of its affiliated, domestic telephone operating companies ("GTE"), offers its Comments in response to the FCC's Notice of Proposed Rulemaking ("NPRM" or "Notice") in the above-captioned proceeding.¹ In the Notice, the FCC proposes to revise its ex parte rules, generally, to prohibit ex parte presentations only in proceedings in which such presentations are barred by the Administrative Procedure Act. Ex parte presentations would be permitted in other proceedings but would have to be disclosed in the public record. The FCC also proposes to modify the ex parte rules regarding notifications filed of ex parte presentations, as well as to impose a duty to bring questionable ex parte circumstances to the Commission's attention. The FCC is seeking Comments on its tentative proposals.

¹ Notice of Proposed Rulemaking, GC Docket No. 95-21, FCC 95-52, released February 7, 1995.

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DISCUSSION

The FCC should continue to treat tariff proceedings, prior to investigation, as exempt from the ex parte rules.

Currently, tariff proceedings, prior to investigation, are exempt from "ex parte restraints or disclosure requirements."² However, the revised Section §1.1204 proposed in the Notice fails to include these tariff proceedings with the other categories of presentations exempt from the ex parte rules.³ In short, the Notice proposes to change the status quo and now subject tariff proceedings, prior to investigation, to the permit-but-disclose rules.

Tariff proceedings, prior to investigation have been exempted from ex parte requirements for many years. GTE is unaware of abuses arising from this treatment. There have been, however, many advantages flowing from the numerous informal contacts involved in tariff matters.

Tariff filings are carrier-initiated changes to its tariff, though these changes are sometimes as a result of Commission directive. Those involved with the tariff process can attest to the many small details involved and the sometimes complex nature of the filings. There may be many informal discussions that take place with the Commission's staff after a tariff is filed and prior to an order initiating an investigation. These discussions are often initiated by the

² 47 C.F.R. §1.1204(a)(6).

³ The Commission does seek comment (§129) on other proceedings which should be exempt.

Commission's staff. There is often need for refining a tariff proposal which requires communications between the filing carrier and the staff. These discussions are often by informal telephone conversations. These informal contacts are not "directed to the merits or outcome of a proceeding"⁴ but merely relate to the carrier-initiated filing. Free and unrestricted communication fosters the timely, efficient and cost-effective implementation of tariffs.

Should the Commission now require that these contacts be disclosed in writing, there would be a loss of flexibility and, a presumably unintentional, chill on this informal coordination process that has worked quite well. Tariff filings are generally processed on a fairly short notice. The additional burden of submitting a written record of these informal conversations may slow down the process. The result would be a less efficient and more costly process for both the filing carrier and the Commission.

Categorizing tariff matters as permit-but-disclose proceedings is inconsistent with the Commission's efforts to amend the ex parte rules to "make them simpler, clearer, and, in some instances, less restrictive."⁵ Accordingly, GTE urges the Commission to maintain the present ex parte regulatory framework regarding tariff proceedings, prior to investigation, by incorporating these tariff matters into the Commission's proposed Section 1.1204 as exempt proceedings.

⁴ See Section 1.1202.

⁵ NPRM at ¶1.

GTE supports the FCC's proposal to require more informative notices in permit-but-disclose proceedings.

GTE endorses the Commission's proposal requiring that notifications of oral ex parte presentations in permit-but-disclose proceedings "*summarize* the entire content of the presentation, even if the date or arguments are not 'new'."⁶ The Commission's proposal would serve the "interests of fairness," in adjudicatory proceedings, by providing parties with a "reasonable opportunity to know the claims of the opposing party and to meet them."⁷ Moreover, in policy-oriented rulemakings, the proposal would assist the Commission in compiling a complete record to support its actions.⁸

It should be emphasized, however, that the proposed rule requires that a party only "summarize" the presentation in its notification. The duty placed on the presenting party should not be too burdensome so as to discourage open communication with the Commission and the Commission's staff. The summary required should be general enough to give notice of the matters discussed, but not too specific as to require the presenting party to prepare a complete pleading.

Furthermore, GTE supports the Commission's related proposal extending the filing requirement for the notification of the ex parte presentation to within three days from the day of the presentation. The three day filing period should

⁶ *Id.* at ¶ 45 (emphasis supplied).

⁷ *Id.* at ¶ 21.

⁸ *Id.* at ¶ 23.

enable parties to effectively comply with the Commission's notification proposal regarding the content of the ex parte presentation.

Imposing a duty to consult with the Office of the General Counsel on ex parte questionable circumstances before engaging in an ex parte presentations is overly burdensome and would have a chilling effect.

The Notice (at ¶ 47) proposes to impose a duty on a person "with reason to believe that a situation raises an ex parte question" to consult with the Office of the General Counsel before engaging in ex parte contacts in questionable circumstances. Willful failure to bring questionable circumstances to the staff's attention could result in a forfeiture or other sanctions.

GTE is opposed to the affirmative duty placed on persons with an ex parte question to consult with the Commission prior to engaging in ex parte presentations.⁹ The proposal is overly broad and does not acknowledge the inherent ambiguities associated with statutory interpretation. Past experience with the ex parte rules and other procedural rules of the Commission confirms that matters are not often black or white, but shades of gray. The affirmative duty proposed could result in a continual need for consultation with the General Counsel's Office. Fear of violating this duty could restrain open communications, especially considering the fear of forfeiture or sanctions. Thus, GTE strongly urges the FCC not to adopt the proposed duty to bring all ex parte questions to the Commission's attention prior to the ex parte contact.

⁹ *Id.* at ¶ 47.

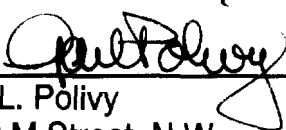
As an alternative or additional matter, the Commission proffers that persons proposing to make an ex parte presentation in questionable circumstances should be required to disclose to the intended recipient of the presentation why it is permissible under the rules. This alternative is also burdensome and would have a chilling effect on ex parte communications.

CONCLUSION

In summary, the Commission should amend its proposed ex parte rules in the manner described above.

Respectfully submitted,

GTE Service Corporation, on behalf of
its affiliated, domestic telephone
operating companies

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April 13, 1995

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